

is to narrow the scope and authority with clear language outlining exactly whom this new regulator will regulate. Surely my colleagues would not want to vote for a bill that creates a new government bureaucracy without knowing exactly what the bureaucracy is empowered to do.

Instead of unlimited authority, this new regulator should focus on the shadow banking entities that operate outside of the regulatory framework and prey on vulnerable people. We have all heard horror stories from our constituents about the bad operators pushing no-money-down or no-doc home mortgages and the reverse mortgage scam artists who sell too-good-to-be-true financing.

There must be appropriate oversight of this regulator. The last thing we need is a new government bureaucracy that, under the guise of consumer protection, is really just pushing one party's political agenda. The current business climate is overwhelmed with uncertainty, and we need to ensure this bureau does not create additional uncertainty for any investor or business that operates in this country. The prudential regulators should have a final say on anything that would put the safety and soundness of institutions and the credit of borrowers at risk.

Next, Missourians refuse to be on the line for another bank bailout. I share their frustration over the concept of an institution being considered too big to fail. We must put an end to too big to fail. We need a mechanism in place that allows for immediate liquidation of failing financial firms.

In my recent conversation with Larry Summers, I expressed this concern, and he agreed that the administration wants euthanasia for failed companies, not resurrection. The government should not be in the business of creating zombies.

The era of bailouts must be over. Any mechanism of resolution must be fair and evenhanded. Missourians will not accept government bureaucrats picking winners and losers in creditor repayment.

In addition, the \$592 trillion over-the-counter derivative market needs stronger rules of transparency. Some of the derivatives traded in this market played a significant role in the recent credit crisis through products such as credit default swaps. These and other transactions—which I call video game transactions, where there is no substance involved and they are making bets on the financial system—should have been cracked down on by the Securities and Exchange Commission.

However, there is an important distinction to be made here. Not all derivative contracts pose systemic risk. As a matter of fact, commercial contracts initiated, for example, by energy companies, utilities, and the agricultural industry are used to manage risks associated with daily operation, from cost fluctuations in materials and commodities to foreign currency used in inter-

national business. These end users, as they are called, do so in order to plan for future pricing so they can provide the least expensive good or service to their consumers as possible. Costly margin requirements for these end users will be directly passed on to families. This will increase the cost for Americans to turn on their lights and put food on their tables.

My hope is that the ultimate Senate bill, like the House-passed bill, will ultimately address this concern with a strong exemption for end users from the clearing and margin requirements. These end users are not major swap participants and should not be treated as such.

Finally, the Federal Reserve Bank's current structure for regulatory oversight ensures that responsibilities and power are shared across the country, not just in Washington and on Wall Street. Regional reserve banks give all regions in the country a voice in banking, credit policy, and monetary concerns, which gives a complete picture to the Board of Governors as they decide on Federal monetary policy. This system was established over 100 years ago and should be maintained in order to protect the concerns of small and medium-sized banks. Financial crises can and do occur within small but interconnected banks, which is why the Federal Reserve needs to continue to take the economic temperature of the entire country, not just of those on Wall Street.

As hard-working Americans and small businesses struggle to emerge from this meltdown and drive our economy through the recovery process, it is the responsibility of the Federal Government to ensure we have a robust regulatory system. It is critical that our regulatory system be modern, responsive, and empowered with appropriate authority, while allowing for business prosperity as we prevent future crises.

In Missouri, I have been working to build an agricultural biotech corridor. This has the potential to foster a whole new interest, providing great jobs in advanced agricultural research and biotech. It is the best stimulus to create high-paying, skilled jobs that rural Missouri and rural America need.

However, today I read in the Wall Street Journal a very disturbing report that this bill would possibly kill small business startups by delaying and limiting the availability of private investor seed capital. Small startups have been at the forefront, driving job creation. In this bill, new requirements by the SEC would insist that investors register with the Commission for a 4-month review, meanwhile tying up vital venture capital or seed capital dollars. This harmful delay for new businesses in need of immediate capital would be crippling.

According to the Wall Street Journal:

No one believes angel investors pose a systemic risk, so it's hard to understand why

these proposals are in the bill. The economy needs more private job creation.

Incidentally, it would triple the minimum wealth of the seed capital investors who could invest in these from \$1 million to over \$3 million. That cuts out three-quarters of the people who might invest in starting up these companies. This would be devastating to rural job creation in Missouri and across the country.

Our greatest potential for new jobs depends upon the innovative ideas, the entrepreneurship of people who are willing to use their own time and ideas but need seed capital to do it. These small companies could not wait 120 days, in many instances. They could not find the seed capital investors. In other words, in sum, moving from too big to fail, this new bill, if enacted with that provision in it, would say to these innovators, these entrepreneurs: You are too small to succeed.

This is not a measure that is going to protect people from Wall Street; this is an overreach by the Federal Government which would shut down the job creation Main Street needs.

Neither political party has a monopoly on good ideas. Reforming our financial system is too important to be done on a partisan basis. I urge my colleagues, and I hope they will consider the ideas I have heard from Missourians. We haven't just been listening to Wall Street; we have been listening to Main Street. I hope the Presiding Officer and all of the Members of this body will listen to what they are saying on Main Street about the need for the small companies, whether they be startup companies or small banks, to succeed. We need to make sure we don't kill the backbone of our American economy.

Madam President, I thank the Chair. I yield the floor, and I suggest the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MCCASKILL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

THE PRESIDING OFFICER (Mr. BURRIS). Without objection, it is so ordered.

#### EXECUTIVE CALENDAR

Mrs. MCCASKILL. Mr. President, I came to the floor on Tuesday of this week to do something I do not think had been done before under the rules. We had a new law that went into effect in the early part of 2007 that gave us a mechanism that was supposed to stop secret holds. We are all waiting to see if by moving all of the nominations by unanimous consent, in fact, the owners of the secret holds step forward.

While we wait to see if the rule that was designed and passed into law works, a bunch of us have been talking. The folks who have been talking about this are the newest Members of the

Senate in the Democratic Party. There are 21 of us who have arrived in the Senate sometime between now and January of 2007. It is a pretty big group of Senators.

In discussing the secret holds with my colleagues who have been here for a fairly short period of time, we decided: Why don't we just quit doing them? Let's quit worrying about whether you are identifying yourself in 6 days, whether you are going to play the switcheroo, pull your secret hold and put on another secret hold. Let's just stop it. No more secret holds.

We now have drafted a letter to Leader REID and Leader MCCONNELL, and we have said: First, we will not do secret holds. We are out of the business of secret holds. We are not going to do them. Second, we want the Senate to pass a rule that prohibits them entirely.

If a Senator wants to hold somebody, fine, but say who they are and why they are doing it. If a Senator wants to vote against somebody, that is their right. But this notion that they can, behind closed doors, do some kind of secret negotiation to get something they want from an agency—let's be honest about it; that is what a lot of this is. It is getting leverage, secretly getting leverage for something they want. Those are not appropriate secrets for the public business.

We have 80 secret holds right now. About 76 of those are Republican secret holds; 4 are Democratic secret holds. By the way, all 80 of the ones on which I made the unanimous consent request came out of committee unanimously. We even checked on the voice votes to make sure no one said no in committee. There were no "no" votes. These 80 nominees were completely unopposed out of committee.

They are everything from the Ambassador to Syria to U.S. marshals to U.S. attorneys. These are people who need to get to work. They are going to be confirmed. They are all going to be confirmed. We need to get this done. We need to stop secret holds. We need to get these people confirmed. We need to change the way we do business around here.

I, once again, give a shout-out to Senator WYDEN and Senator GRASSLEY who worked on this issue for a number of years. We are going to open this letter to all Members of the Senate and, hopefully, before we find out—we are all waiting to see what happens in the 6 days that are looming for all these secret holds, if people step up into the sunshine. If they do not, in the meantime we, hopefully, will get unanimous support from Senators that secret holds are now out of fashion and no longer going to be tolerated in the Senate.

Mr. President, I yield the floor for my colleague from Colorado, Senator BENNET.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BENNET. Mr. President, I thank the Senator from Missouri for kicking

off this discussion. I rise in strong support of this effort by a group of reform-minded Senators to finally get rid of this ridiculous and insane practice of anonymous holds. The American people have little patience for this political game when they are going through what they are going through.

What people should understand is, at least in my view, this is less about partisanship. The Senator from Missouri talked about the fact that these are people who passed unanimously out of committee, with Republicans and Democrats supporting the nominees who somehow, between the committee process and the Senate floor, got stuck. They are getting stuck anonymously. I say it is not about partisanship. I say this is a perfect illustration of Washington, DC, being completely out of touch with what is going on in the country.

No one else in the country invents a set of rules to make sure they do not get their work done. But that is what we are doing in the Senate. That is why I think it is high time we got rid of these anonymous holds. I would go even further. I have legislation that gets rid of the anonymous holds and bans these secret holds. But it would do more. It would also require that a hold be bipartisan or else it expires after 2 legislative days. If a Senator wants to place a hold, that is within their rights, but we are going to make sure it is scrutinized. We are going to make sure they can get support from somebody on the other side of the aisle for holding up the country's business. All holds under my bill would expire after 30 days, whether they are bipartisan or not.

I also wish to highlight that the Senators who have taken this strong stance against secret holds are willing to put our money where our mouth is. While Washington bats around about this and other reforms, we have all pledged that we will stop the practice of secret holds ourselves. It was easy for me to do because I have never placed a secret hold on the Nation's business, and I never will.

This is a small but important illustration of what is not working well in the Senate, what is blocking progress for the American people. It is a small step but an important step to demonstrate that we can actually do our work differently, that we have been sent here to have an open and thoughtful debate about the issues that confront our great country. I am proud to be here today with my other colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, it is unfortunate that we have to be on the Senate floor this afternoon to talk about so many of the nominees we need to do the work of this country who are being held up, and being held up by people who are not willing to identify

themselves or say what their issue is with these nominees.

I am pleased to join my colleagues. I am glad we are mounting this effort. We need to get rid of the secret holds. But it is unfortunate that we are where we are.

I understand why people are frustrated with what is happening here. People want to see things get done. They understand we have significant challenges facing the country, and they want to see action on those challenges.

It is clear that one of the areas where there is a problem is with the 80 or so people who were nominated who have been held up, some of them for months and months, because somebody has an issue, not with the person who is being held up usually, but as my colleague from Missouri said because someone wants to get the attention of a department or agency within government or because somebody wants to keep the Obama administration from doing the work of the people.

I wish to point out some of the people who have been on hold. No one has identified themselves as to why they had these people on hold. Until just a few minutes ago, we had five U.S. attorneys and five marshals. We have the Deputy Director of National Drug Policy Control. They come from States all across this country—from New York, Indiana, North Carolina, South Carolina, Michigan, Maine, Idaho, and Florida. We have a lot of big States there, a lot of States where the people's business is not getting done because those nominees have not been put in place.

The sad thing is, the people who have these folks on hold are trying to get back at somebody in government, but the people who are suffering are the constituents in those States where the work is not getting done.

I have a very personal example that I have talked about before on the floor of the Senate. A woman from New Hampshire who has now been confirmed to lead the Office of Violence Against Women, Judge Susan Carbon. This is someone who was appointed first by Senator JUDD GREGG to be a judge, and I then made her a full-time judge. She got through the committee on a unanimous vote.

I think all of us would like to see the work of the Office of Violence Against Women done, just as we want to see the work of the U.S. attorneys done and the work of the marshals done. Yet she was held up for 2 months, until I came to the floor and started asking questions about who had that secret hold on her. We never did find out. We never did find out why she was on hold or what the concern was. That is the problem with all these different holds.

Senator BENNET said he hasn't put any secret holds on anyone. Well, neither have I. If I am going to put a hold on somebody, I want the world to know about it because it is somebody whom I have a serious issue with or someone we have concerns about the job they would do. That is not the case with any of these folks.

So I would urge all my colleagues to sign on to say that they will oppose secret holds and to release those holds on the nominees who are being held up and let's let the work of the people in this country get done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. UDALL of Colorado. Mr. President, I also rise to express my appreciation to the Senator from Missouri, Mrs. McCASKILL, for her leadership on this effort to reform the way the Senate advises and consents. Because I have great respect for the traditions of the Senate, I was curious as to why holds are a mechanism or a tool available to individual Senators. What I found out is basically speculative; that is, that in the past, there is a belief that Senators—because they could only get back to Washington by horse and buggy or by horse itself—needed time to study a potential nominee. It was a courtesy. It maybe made sense in those horse-and-buggy times, but these are modern times, and the secret hold now, in particular, is being used to accomplish, in many cases, political or perhaps even policy goals. I have great respect for the venerable traditions of the Senate, but this seems like one that should be set aside, frankly.

I was also curious to study some of the statistics that I will share with the entire Senate. Since President Obama took office—I think it is 16 months, give or take a few days—we have voted on 49 nominations. Of those 49 votes, 36 of them—which is about 75 percent of the nominations—have been delayed. On average, these nominations languish or sit on the Executive Calendar for over 105 days. That is on average. Some have waited many months more. Then, when we look at the vote totals of the nominations that finally come to the floor, 17 received more than 90 votes, 10 received more than 80 votes, and 6 received more than 70 votes. So out of the 36 nominees, there were 33 that I think you could characterize as being approved overwhelmingly by the Senate, after a very long and unfortunate wait.

Right now, on the Executive Calendar, there are 94 nominees awaiting the Senate's advice and consent action. At this time in George W. Bush's Presidency, there were 12 nominees. So we have 94 on the one hand and 12 on the other hand.

It is time for my colleagues on the other side of the aisle to stop abusing the Senate's responsibility to provide advice and consent for the President's well-qualified nominees.

Let me just end on this note. If a Senator wants to place a hold, that is all well and good, but it shouldn't be a secret hold. As the previous two speakers have said—and I think Senator McCASKILL as well—I have never used a hold. If I wish to put a hold on a nominee, I will make it public. I will make the case and take a stand on the floor of the Senate. That is the way we want

our debates to be in the Senate—the world's greatest deliberative body. We shouldn't be doing things such as this in secret.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Ms. KLOBUCHAR. Mr. President, I listened to the Senator from Colorado, and I was thinking about our two States. They both are beautiful States. OK, they have a few more mountains than we do, but we have 10,000 lakes. We both have open democracies—governments that work, governments that are open. There is no secrecy in our States. We have blue skies, open prairies, open lands. To me, it is no surprise that we would have Senators from these two States standing and saying this is ridiculous.

I thought Senator UDALL did a great job of going through all the numbers and the nominations that have been put on hold, but we all know what is at the root of this. It is a procedural game that allows this to happen—the secret hold.

When I came to the Senate in 2007, my first priority was ethics reform. I was so pleased, and I thought we had gotten rid of the secret hold. That is what we said we did. The rule we adopted then—as soon as unanimous consent was made regarding a specific nominee—said that a Senator placing a hold has to submit to the majority leader a written note of intent that includes the reason for their objection. So they have to put in writing why they are objecting. Then it says that no later than 6 days after the submission, the hold is to be printed in the CONGRESSIONAL RECORD for everyone to see.

So we thought this was a pretty good idea—sunshine being the best disinfectant. By making the hold public and forcing Senators to be accountable for their actions, we could have open debate. As I heard Senator SHAHEEN just say, we should be able to tell the world why we are putting on a hold. We may have a good idea.

But that is not what has been happening. Instead, what has been happening is, Senators are playing games with the rules. They are following the letter but not the spirit of the reform. It is unbelievable to me. They are actually rotating holds.

It is sort of like what we see in the Olympics, where they have a relay and they hand off the baton. This baton is going from one Senator to another so they can keep the hold going. One Senator has it for 6 days. Then it is passed off to another for 6 days. So I guess if delay was an Olympic sport, they would get the Gold Medal.

What we have is a group of Senators from the other side of the aisle, for the most part, who are gaming the system. We have been spending a lot of time in the last few days talking about other people who game the system—people on Wall Street—so I don't think it should be happening in this very Chamber.

I am very pleased Senator McCASKILL, along with Senators GRASSLEY and WYDEN, have been working on this for so long and have taken a lead on it. I urge my colleagues to sign this letter to end the secret hold. There shouldn't be secrets from the public when it comes to nominations. This isn't a matter of top-secret national security or some strategy that we would use when we go to war. This is about nominations from the White House. This is about people who are going to be serving in public jobs. We should know who is holding them up, who doesn't want them to come up for a vote and why. Then we can make a decision and the public will have the knowledge of what is going on in this place. That is the only way we are going to be able to build trust again with this democracy.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FINANCIAL SERVICES INDUSTRY REGULATION

Mr. BENNETT. Mr. President, I rise to discuss the issue that is before the body and before the country right now with respect to control and regulation of the financial services industry. The President of the United States has given a number of speeches on this one. I understand the latest one was today, in which he attacked Republicans for listening to the big banks of Wall Street in our concern about the details of the bill that has been offered out of the Banking Committee by Chairman DODD.

I am a member of the Banking Committee. I voted against the bill in the Banking Committee. It came out on a straight party-line vote. For that I am being castigated by the President and others for being a tool of Wall Street and the big banks.

I want to make it very clear that my opposition to parts of this bill have nothing whatsoever to do with Wall Street and the big banks. I have not been to Wall Street to discuss this with any executives of any of the big banks. I have been in Utah, and I have been discussing this with businesses in Utah, businesses that you normally would not think would have any interest whatsoever in regulation of financial services.

We think of financial services as insurance companies and brokerage houses and banks. What I have discovered, hearing from my constituents, is that the people who are the most worried about this are small business men and women who have nothing to do